

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

K.S., by her guardian ad litem Kenneth L. Isserlis, and DOROTHY SPIOTTA and PAUL SPIOTTA,

NO. CV-08-243-RMP

## Plaintiffs.

-VS-

AMBASSADOR PROGRAMS, INC.,  
AMBASSADORS GROUP, INC., and  
PEOPLE TO PEOPLE  
INTERNATIONAL,

## Defendants.

**ORDER AFFIRMING FINDINGS  
AND RECOMMENDATIONS,  
GRANTING PLAINTIFFS'  
MOTION TO COMPEL, AND  
DENYING DEFENDANTS' JOINT  
MOTION FOR PROTECTIVE  
ORDER AND MOTION TO  
EXPEDITE**

Before the Court are Plaintiffs' Motion to Compel Agreements (Ct. Rec. 100), Defendants' Joint Motion for Protective Order (Ct. Rec. 122), and Defendants' Motion to Expedite Hearing on Defendants' Joint Motion for Protective Order (Ct. Rec. 126).

The Court reviewed Plaintiffs' Motion to Compel Agreements (Ct. Rec. 100) and supporting memorandum (Ct. Rec. 101), declaration and exhibits (Ct. Rec. 102), Defendants' Joint Motion for Protective Order (Ct. Rec. 122) and supporting memorandum (Ct. Rec. 128), declarations and exhibit (Ct. Rec. 123, Ct. Rec. 124). The Court referred the motions to the Honorable James P. Hutton for a Report and Recommendation (Ct. Rec. 143).

The Court now has reviewed the Findings and Recommendations of the Honorable James P. Hutton (Ct. Rec. 159), Defendants' objections to the Recommendations (Ct.

1 Rec. 170), and Plaintiffs' response to those objections (Ct. Rec. 177), as well as the  
 2 remaining file and pleadings. Defendants argue that Judge Hutton mistakenly relied on  
 3 the trade secrets "compelling reason" standard for evaluating whether Ambassador's  
 4 information should be protected from public view. Plaintiffs respond that Judge Hutton  
 5 applied the correct standards for determining whether documents should be shielded from  
 6 public access.

7 The district court affirms the determination of a United States Magistrate Judge  
 8 unless that determination is clearly erroneous or contrary to law. LMR 3(b).

9 Rule 26(c) provides the basis for protective orders and states, in relevant part:

10 Upon motion by a party or by a person from whom discovery is sought . . . and  
 11 **for good cause** shown, the court in which the action is pending . . . may make  
 12 any order which justice requires to protect a party or person from annoyance,  
 13 embarrassment, oppression, or undue burden or expense, including one or more  
 14 of the following:

15 (7) that a **trade secret or other confidential** research, development, **or**  
 16 **commercial information** not be revealed or be revealed only in a designated  
 17 way . . . .

18 Fed. R. Civ. P. 26(c), 26(c)(7) (emphasis added).

19 Courts applying rule 26(c) distinguish between discovery materials attached to  
 20 nondispositive motions and materials attached to dispositive motions. *Kamakana v. City*  
*and County of Honolulu*, 447 F.3d 1172, 1180 (9th Cir.2006). Good cause is not enough  
 21 to rebut the presumption of public access when "documents subject to a protective order  
 22 are filed under seal as attachments to a dispositive motion." *Foltz v. State Farm*, 331 F.3d  
 23 1122, 1136 (9th Cir.2003). There, the court applies the heightened "compelling reasons"  
 24 standard in deciding whether to shield a document from public record. *Foltz*, 331 F.3d at  
 25 1136; *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir.1995). The court should  
 26 consider all relevant factors in making the compelling reason finding, including "the  
 27 public interest in understanding the judicial process and whether disclosure of the  
 28

1 material could result in improper use of the material for scandalous or libelous purposes  
 2 or infringement upon trade secrets . . . ." *Hagestad*, 49 F.3d at 1434.

3 Judge Hutton set out both the good cause standard and the compelling reasons  
 4 standard in his analysis. He made findings that Defendants do not challenge. He found  
 5 that the agreements contain some material that could damage Defendants'  
 6 competitiveness in the market. He further concluded that Defendants themselves revealed  
 7 most of the material, with the exception of royalty fee arrangements in their Annual  
 8 Report and elsewhere. Judge Hutton recommended redaction of Paragraph 6.B. of the  
 9 General Contract and redaction of references to specific student or adult fee amounts or  
 10 volumes in the deposition transcripts of Mary Eisenhower or Jeffrey Thomas. Such  
 11 redactions would protect Defendants from any damage resulting from disclosure,  
 12 regardless of whether the disputed agreements and deposition transcripts are submitted in  
 13 support of dispositive or nondispositive motions.

14 The Court finds that Judge Hutton's determinations are not clearly erroneous or  
 15 contrary to law. Therefore, the Court affirms Judge Hutton's findings and conclusion that  
 16 Defendants have not made a showing sufficient to meet either the good cause or  
 17 compelling reason standard to shield the disputed material from the public, with the  
 18 exceptions of the material to be redacted (*See* Ct. Rec. 159, p. 11).

19 Accordingly,

20 **IT IS ORDERED** that:

21 1. The Findings and Recommendations (Ct. Rec. 159) filed December 12, 2009, is  
 22 **AFFIRMED** and **ADOPTED** in its entirety and incorporated by reference as a part of  
 23 this order;

24 2. Plaintiffs' Motion to Compel Agreements (Ct. Rec. 100) is **GRANTED in part**  
 25 and **DENIED in part**, subject to the limitation that Paragraph 6.B. of the General  
 26 Contract should be redacted in its entirety before any public filing with the court. In

addition, any reference to specific student or adult fee amounts or volumes should be redacted from the depositions of Mary Eisenhower and Jeffrey Thomas before public filing with the court. Subject to these limitations, the parties may use and file the redacted agreements and related deposition testimony without further restriction in this litigation;

3. Defendants' Motion for Protective Order (Ct. Rec. 122) is **GRANTED in part** and **DENIED in part**, subject to the redactions and limitations stated in this order;

4. Defendants' Motion to Expedite Hearing on Defendants' Joint Motion for Protective Order (Ct. Rec. 126) is **DENIED** as moot;

5. The District Court Executive is directed to file this Order and provide copies to counsel for all parties and to Judge James P. Hutton.

**DATED** this 18th day of February, 2010.

*s/ Rosanna Malouf Peterson*  
ROSANNA MALOUF PETERSON  
UNITED STATES DISTRICT JUDGE